



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE GOVERNMENT'S RELATION TO CORPORATE CONSTRUCTION AND MANAGEMENT

By HON. PETER S. GROSSCUP,
Presiding Judge United States Circuit Court of Appeals, Chicago.

I do not purpose to use up the time you have given me for this address in any discussion of my subject that would be merely juridical; that will be left, so far as I am concerned, to those who approach the subject from the standpoint of the jurist only. Nor do I intend to deal with the subject on the supposition that you wish a detailed thesis on the scope and limits of government upon the thousand and one points at which, in practice, government and the management of corporations come into contact; that I shall leave to those who write the guide-books of corporate practical life. What I purpose doing—and in so doing am conscious that I may be departing from the specific subject in the mind of those who invited me—is to utilize this occasion, and this audience, and the greater audience that this Academy reaches, in an effort to point out, not so much what should be the scope and limits of governmental interference in the management of the corporations, as they exist to-day, as what should be the purpose, as well as the scope and the limits of government, in its construction and management of the corporation of the future. For I take it, it is just as much the province of political and social science to look ahead as to look along the way—to forecast, and even to aid in foreordaining, the great political and social developments of the future, as to take stock of the present. To that end I shall try to lay down first the structural principles on which the corporation of the present should be reconstructed into the corporation of the future; secondly, the fundamental object, social, political and economic, of such work of reconstruction; and, lastly, the scope and limits of governmental interference in bringing that about. If the taking up of the subject in this order has the appearance of putting the remedy before the evil to be remedied and the power of government to remedy—in other words, of putting the cart before the horse—my answer is that in setting

forth as well as I can what I regard to be the fundamental evil of the present day corporation policy, and the power of government to cure it, I wish you to be bearing in mind constantly, not only the pertinency of the changes that I suggest, but their simplicity also. Or, to put it in another way, I do not wish, while I am setting forth the deep ultimate effects that the present corporation policy of the country is having upon the political and social fortunes of the people, to have you carrying along in your minds the feeling "So it is; all that is true; but how can it be helped?" For it is my judgment that it can be helped, and that the first duty of American statesmanship that is really in earnest is, not to use up the reformative energies of the American people in storms and counterstorms of blind accusation, but, having intelligently uncovered the evil, to proceed to lay the axe at the root.

(a) First, then the structural principles on which the corporation policy of the country should be reconstructed. In this country the corporation is a creature of the executive department of the several states, and issues out of such department almost as a matter of course. Neither the object for which the corporation is formed, nor the amount of its capitalization, nor the character of the securities issued, commands any preliminary attention other than such as is merely perfunctory. Put-your-nickel-in-the-slot-and-take-out-a-charter, is the invitation that the states extend; and in line before the slot machine—entitled, too, to an equal place in the line—are the corporate projects conceived to defraud, as well as those that have an honest purpose. Neither is detained by so much as an inquiry. For indifference such as that, I would substitute, *at the very threshold of the corporation's application for existence*, an honest, careful inquiry, by some tribunal of government—the inquiry being whether the project should be incorporated at all, and if so, upon what terms. Take, for example, the Northern Securities Company, dissolved by order of the United States Circuit and Supreme Courts. Had application to organize such a company been made to a tribunal that gave the matter judicial investigation—the government being represented by counsel on whom devolved the duty of seeing to it that no corporation contrary to law or public policy should be launched—the application, presumably, would have been refused. What honest project can object that the inquiry should take place before, rather than after, the event? One of the claims on public approval that

the administration of Mr. Roosevelt justly puts forward, is that he is diligently pursuing the thief after the horse is stolen. Why should not the stable door be locked *before* the horse is stolen?

(b) The corporation as at present organized by the states has license to issue all the securities it chooses—securities whose place in the corporate geologic stratification no ordinary mind can locate. Out of this have come the many instances of capitalizations that serve no purpose other than to exploit with one hand the consuming public, while baiting with the other that portion of the public, which, with hard-earned savings, is looking for some opportunity to help itself along in the race of life. No honest project needs license like that. Let the initial securities issued be related in a fair business way to the actual values put in. Let this be subject to careful inquiry before the securities are issued.

(c) Incorporated enterprise, just as private enterprise, should be given room to grow. A dollar turned into two, ten, twenty, if turned honestly, wrongs no one. "Go forth, increase and multiply," is a command without which economic progress would not be. But in all this there is no need that the corporation should initially capitalize a projected success, that if it exists at all, exists only in the future. Let the securities issued on account of unusual expected success be issued only when success is established; and let them be fairly related, as the enterprise grows, to the increased value of the actual earning power developed. I can see no reason why in any honest enterprise, the question whether additional securities shall be issued, should not be made the subject of judicial inquiry.

(d) But the restriction of capitalization to figures that are fair will accomplish little, if the declaring and paying of unearned dividends be left to those who are in control of the corporations; for it is not on the par value of securities, but upon the size and regularity of dividend payments, that the public makes up its judgment as to values; and it is not on mere capitalization that the schemer in corporate securities counts, but upon his ability to make the public believe that the capitalization has an earning power. Take the well-known case of some of the Chicago traction companies. When organized twenty years ago these companies put into operation a street railway system which, on its physical side, was one of the best then in existence. Street railway traffic in the City of Chicago was such that out of its earnings the system, besides paying interest

on actual money invested, and a reasonable return upon the project as a business venture, could have been kept up to the highest standard, so that it would have continued to be one of the best in the world. But such was not to be, for in addition to the securities issued for the money actually invested, a flood of other securities were issued; and to make these good in the hands of the promoters, the chief thought was naturally concentrated, not upon keeping up the system as a carrier of passengers, *but of keeping up dividends upon such promotion securities as would enlist the interest of the stock market*; for without dividends the securities would have remained near zero, and that, too, irrespective of how small the issue was. But with high dividends, paid year after year, until they were no longer questioned, the promotion securities rose in the stock market to par, to double par, and beyond that, irrespective of how large the issue was. It was not the capitalization, but the high dividends regularly paid for a long period that did the trick; not real dividends in any honest application of that word to earnings, but trick dividends—dividends that stripped the enterprise of its power to keep up with its public duty; that let the enterprise gradually but surely run down; and that borrowed millions for dividends on the top of the depletion. Indeed, the whole transaction was a moral crime—a crime that robbed honest men and women of the accumulations of a lifetime—a crime that is not fully expiated either by arraigning before the bar of public opinion the men who got away with the plunder. I arraign, *as accessory before the fact*, the people of the great state who, scrupulously honest in their individual dealings, issued to the projectors of this crime the ready-made corporate weapon without which the crime could not have been committed.

(e) One thing more in the line of structural principles. The first duty of every enterprise, incorporated or private, is to secure to the capital invested its eventual safe return, while paying on it from time to time, after payment of operating expenses, such fair returns for its use as the nature of the venture suggests. That is what capital always has the right to ask. But this having been accomplished, there are some enterprises now that take labor and management into partnership in the further disposition of the fruits of success. That kind of partnership is not compulsory, and is not usual. I would not make it compulsory; but I would try to infuse into

the corporation of the future, an incentive and a spirit that would make it more usual—that would give to the workman, the clerk, the employe of every kind, an opportunity to individually share in the growth of the enterprise to which he is attached. This is not a mere philanthropic dream. The spirit will come when the employe feels that what he gets, he gets as a matter of contract, not as a matter of gift, and that he is as secure therein as is the corresponding interest of the employer; and when the employer wakes up to the truth that as it is not by bread alone that men live, it is not for bread alone that men put forth their best work. There are many ways that the incentive may be supplied, a possible one being such modification of the proposed income or inheritance tax, if we are to have such tax, that a distribution of the fruits of success among those who, by their labor, have contributed to the success, would be accepted as a partial discharge, at least, of the tax that success otherwise would have to pay into the treasury of the government. Indeed, every honest expedient should be employed toward interesting, in the proprietorship of enterprise, the men attached to the enterprise. As between subjecting success to the obligations created by an income and inheritance tax, or to the obligations of a wider diffusion of the permanent fruits of success among those who by hand and brain contribute to it, the former is the step toward socialism, while the latter is individualism of the highest type, fitted to the times in which we live.

The detailed form that this work of corporate reconstruction should take, in accordance with the structural principles laid down, would be best performed, perhaps, by a national commission. Such commission would have for precedent the work done by Germany thirty years ago, a corporate reform that has almost disarmed German socialism, except as *it is* now an agitation against the unjust land laws of that country. Indeed, both in Germany and in France, the workmen and other employes of large industrial enterprises are rapidly acquiring individual proprietorship in the particular industry to which they are attached—a development that transplanted to this country while not even tending to diminish wages here, would be greatly helped along by the fact that wages here are higher than anywhere else in the world.

That brings me then, to the second point—the *fundamental object*, social, political and economic, of the work of corporate

reconstruction. In any treatment of this point, I shall put before you three leading facts that may not at first sight appear to have much relation to each other, but that in the end will be seen to be so co-related that they cannot be considered apart in laying the groundwork for the corporate reform that lies before us.

The first of these facts is the instinctive trait of the Anglo-Saxon, inherited by the American, and enlarged and deepened in him, to have a place that is ALL his own, in the political, the social, and the industrial structure of which he is a part—opportunity for individual achievement—liberty of individual action. In an introductory essay to one of the editions of "Parkman's Histories," John Fiske portrays this trait in comparing the colonies of France, planted by Louis the XIV, with the New England colonies. "In Canada," says Mr. Fiske, "the protective, paternal, socialistic or nationalistic theory of government—it is the same old cloven hoof under whatever specious name you introduce it—was more fully carried into operation than in any other community known to history, except in Peru. No room was left for individual initiative or enterprise. All undertakings were nationalized. Government looked after every man's interests in this world and in the next; baptized and schooled him; married him, and paid the bride's dowry; gave him a bounty with every child that was born to him; stocked his cupboard with garden seeds, and compelled him to plant them; prescribed the size of his house, and the number of horses and cattle he might keep, and the exact percentages of profit he might be allowed to make; and how his chimneys should be swept, and how many servants he might employ, and what theological doctrines he might believe, and what sort of bread the baker might *bake*; where goods might be bought, and how much might be paid for them. Unmitigated benevolence was the theory of Louis the XIV's Canadian colony, and heartless economy had no place there."

"The struggle between the machine-like, socialistic despotism of new France," continues Mr. Fiske, "and the free and spontaneous vitality of New England, is one of the most instructive object lessons with which the experience of mankind has furnished us. The depth of its significance is equaled by the vastness of its consequences. Never did destiny preside over a more fateful contest; for it determined what kind of political seed should be sown all over the widest and richest political garden plat left untilled in the

world. Free industrial England pitted against despotic militant France." And free industrial England won—France, with her paternalistic theories of government, retiring from the continent amidst the ruins of her failure.

The most conspicuous product of this Anglo-Saxon trait, carried forward into the experiences of the people of the United States, is our agricultural proprietorship,—the fact that the farming lands of the country are held in small independent holdings by the people who do the farming,—a trait that was recognized and helped along in the settlement of the great public domain by the pre-emption and homestead laws of the United States. And out of that wide diffusion of proprietorship has come a distinctive type of the world's farmer,—the American farmer,—undoubtedly the strong heart and the enduring hope of the republic.

Another product, until the corporation came, pre-empting for itself almost the whole industrial field, was the American mechanic—the carpenter, the saddler, the gunsmith, the whole run of men attached to the trades—who not only operated his shop, but individually owned it, and thus made a place for himself, as an independent proprietor, among the other proprietors in the community. One of the most far-reaching and dangerous consequences of the introduction of corporate life is that this kind of wide-spread individual proprietorship has almost entirely disappeared.

Still another product was the independent citizenship that came out of this instinctive trait in every man, whatever his place in the community, to have a man's place in the affairs of which he is a part—the individual character that goes with the consciousness of individual independence. Lincoln was a type of this. Lincoln would have been almost impossible in any other country. Like many other great men scattered through the world's history, he was denied the college-bred start, that in the make-up of personal character is the chief value of the collegiate ready-made formulas—was left to his own native resources to find social, moral, and political foundations on which to build the structure of his individual character. But with this difference, that in free America, the great character thus self-built, grew up a constructive and conservative character, in harmony with the best constructive energies of its day, while great similar self-made characters, in countries where political and industrial freedom do not prevail, have

usually allied themselves to the revolutionary tendencies of their times. What Lincoln was, in a superlative degree, millions of Americans, past and present, have been in only lesser degree—types of the citizenship that is produced out of a political and industrial civilization that gives to the instinctive trait of individuality room for full play. So much for the first fact.

The second leading fact is the sudden bend in the road on which, within our own time, this dominating individual trait has come. When the great new industrial domain that is the main material achievement of this generation of men, *as fast as it was building*, went into corporate form—industrial American *individually* built up transformed into industrial American *corporately* built up—a crisis in the development of our civilization was reached. There are said to be in America more than four hundred thousand corporations; when the government was founded there were less than thirty. The people in America, who are dependent upon the treasuries of corporations for their daily bread, number nearly forty millions; when the government was founded all the employes of all the corporations would not have filled one of our larger halls. The American who would in this day have a part in the proprietorship of his country's industrial property, cannot, as formerly, acquire some individual concrete thing, or set of things, upon which he can lay his hand, and say: These are mine. He who still seeks in this day to have a proprietary part in the country's industrial domain, can have it only through some intermediary corporation—the corporation being almost the sole intermediary between him who seeks to own and the thing to be owned. All told, what other changes that one can imagine, could be so far-reaching in their effect upon the underlying conditions upon which our republican idea of government was originally founded.

The third leading fact, largely the effect of the changes I have just described—the practical elimination of one-half of our population out of a proprietary share in the country's property—is based upon the statement in the last annual report of the Comptroller of the Currency, that there are in operation in the United States twenty-one thousand three hundred and ninety-six banks and banking institutions, with local deposits of twelve billion six hundred twenty-eight million seven hundred and twenty-seven thousand sixty-five dollars. This does not include redeposits by one

banking institution in another; nor does it include the large sums held by life insurance companies in trust for their policy holders; nor is it the sum total, as some conclude, of the many deposits of a given period, thus duplicating themselves many times, in any active times; but it is the sum the banks and banking institutions owe, at the close of some designated day, on account of the deposits. What this huge total of nearly thirteen billion dollars represents *is the individual wealth of the American public, which, uninvested in the property of the country by the depositors directly, is put by them into the financial institutions of the country, from which it is, of course, eventually taken out for investment, chiefly by those who borrow it for that purpose.*

To some extent these deposits represent what we call the working capital of the country—the particular amounts that the merchant, the manufacturer, the railway company, and other individual depositors always keep on hand in bank, to meet their current needs; and to some extent these deposits are kept in the bank vaults as reserve. But compared with the whole, neither this reserve nor this working capital is considerable. Inquiry of one of the greatest of the railroads, whose securities at market values at the time of the inquiry were between three and four hundred million dollars, disclosed that that road carries an average bank account of about one million, or less than one dollar for every three hundred of its market value. Inquiry of a leading merchant shows that his average bank balance is proportionately larger than this, but considerably less than one dollar in one hundred of the value of his establishment. The largest average bank balance carried, as working capital, that I have discovered, is that of the largest manufacturing corporation of the United States—the United States Steel Company—a corporation that beginning with the raw material, turns it over again and again until the finished product is delivered to the purchaser—in that way plainly calling for the largest kind of cash capital. But even here the ratio of bank balance to the total value of the properties is only one in eighteen; so that, assuming that the enterprises of the country that require distinctive working capital are of the value of fifty billion dollars—nearly one-half of the country's entire wealth—the bank deposits representing such working capital cannot much exceed one billion of the nearly thirteen billion dollars that constitute the total of

the deposits—an estimate unaffected, too, by whether such working capital is first borrowed from the bank and then redeposited, as is often the case, or is in the first instance deposited out of the depositor's own ready means. The truth is, that the great bulk of the thirteen billion dollars—a deposit without example anywhere else in the world, and without example in any previous period of the world; a deposit that has grown more than five hundred per cent since 1880 while population and wealth have not grown over sixty per cent—is either utilized by the banks themselves, in their business of buying bonds in large quantities and selling them out at retail, or is loaned by the banks to those who are doing the actual business of the country, and carrying the corporate securities of the country. Senator La Follette, in his recent speech, was not far from right, when he said that the domain of incorporated property is in the control of a few men. The numbers the senator gave, and the names, may be incorrect, but compared with the eighty millions of people that make up this nation, the substance of what he said was true. But mark the word "control." Senator La Follette does not say that the "wealth" of the country is in these few hands—not even the wealth upon which the domain of incorporated property rests, for its financial foundations. Were he to say that, he would be far wide of the truth.

Stated in another way, the American people have to-day in bank, a sum of money unemployed for investment directly by themselves, but employed by a comparatively small borrowing class, that nearly equals, at present market prices, the value of all the railroads of the country put together, stocks, bonds, and all; and that increased by what the people of the country individually hold, in the way of bonds, stocks and other corporate securities, constitutes almost the entire wealth on which the corporate business of the country actually rests. Indeed, were it possible for all the banks and saving societies to liquidate at once, paying back to the depositors, at their present market prices, the corporate securities into which, through the small borrowing class, a great part of these deposits have gone, there would immediately turn up throughout every quarter of the country, and in direct possession and ownership of those of our people who have saved anything at all, in addition to the corporate bonds and stocks already held by them, so large a part of the remaining corporate securities, that it could be truthfully said

that the owners of the property of America were the people of America—the property that is incorporated as well as the property that is unincorporated. Especially would this be true, were we to add to that what the clerk, the engineer, the employe attached to every industry, would get in the way of a proprietary share or dividend were an enlightened and just system of proprietary diffusion of property once entered upon.

But, while this statement shows that the American people, in the ordinary walks of life, still own the actual wealth of the country, as that wealth is found *at its sources*—the deposits in the banks being not by the rich men (who are borrowers of the deposits), but by the Americans in the ordinary walks of life—it shows also, that the industrial proprietorship of the country is not a direct proprietorship by the people at large—is, indeed, exclusive of corporate bonds, a proprietorship by the few, upon the wealth of the many, poured through the financial streams into the money centers; or as Mr. Jacob Schiff puts it, the rich men of New York are the product of the great financial reservoir that the little mountain streams are continually feeding.

Here, then, we have these two great facts: (a) The instinctive trait of the American to conduct industry along the lines of industrial liberty, and to have a *direct individual* part in the industry thus created; and (b) the almost complete submergence of that trait, in the new great incorporated domain, in the service of which nearly one-half of our people are compelled, by the conditions of the times, to serve out their lives. And out of this have come those phenomena that already mark our industrial system and our political prospects as things altogether different from the ideas that prevailed before the corporation came.

Let me hastily run over these phenomena. First, there is the so-called trust. The life principle of the trust is the gathering into one of what would otherwise be competitors—the suppression of competition. And more than from any other cause, this has been accomplished by gathering together, into the hands of the few (themselves the promoters of the so-called trusts) the financial resources of the entire country. Can competition be substantially restored until the capital of the country, springing as it does from every quarter of the country, and from the energy and frugality of all her people, is at the call, not of those who would

suppress competition, but of those who would encourage it? And what hope is there that competition will ever be substantially restored until the corporation, the only medium through which capital can be effectually wielded, becomes in the eyes of the people, *a trustworthy medium through which to work out the people's instinct to have a direct individual part in the proprietorship of the country.*

Secondly, there is this other phenomenon, largely economic, the inherent liability, as things now stand, to sudden and unreasoning panics, such as is illustrated by the panic of last autumn, the industrial effects of which are still upon us. Let me illustrate what I mean by taking the example of a manufacturing concern that six months ago was one of the largest in its line, and one of the most prosperous in the country. To-day it is in the hands of receivers. The change is not due to loss of property, or loss of business orders; its property is the same as before, its business orders almost as large as they were before. The change was due solely to the fact that when the recent wave of financial uncertainty passed over the country, this concern was doing business, not on the stable basis of a paid-in capital, as would have been the case had its capital been invested capital, but upon the basis chiefly of a borrowing capacity at the banks—a borrowing capacity always uncertain and fluctuating, which, in the case of this concern, was cut down in a single day from three millions to two millions, thereby as effectually cutting down the productivity of the concern as if a million dollars worth of its property had been suddenly lost by fire or other catastrophe. Indeed, outside a few hundred thousand dollars represented by actual invested capital, the entire property and equipment of this concern, was this fluctuating borrowing capacity at the banks.

Now one of the most important business facts that stare the country in the face to-day, is the fact that this business concern and its troubles, are typical of hundreds of other concerns and their troubles, throughout the country. The banks, taken as a whole, are sound; no banking system was ever sounder. The people in the ordinary walks of life are not in debt; never before has this class of people been so free from debt. The people in the ordinary walks of life are richer in their own right than they ever were before. It is the people in the ordinary walks of life who have furnished, and who

still own, as I have already said, the nearly thirteen billion dollars of bank deposits upon which the business and corporate activities of the country have chiefly drawn for their financial foundations; and were the banks to pay off these people, not in currency, but with the commercial and corporate securities into which the bulk of these deposits have gone, the proprietorship of the country—the direct proprietorship of the commercial and corporate enterprises of the country—would be in the immediate possession of the people free from debt. There has been no general over-production, such as in 1893. A foreign trade, constantly expanding, lies open before us. All the normal conditions for continued prosperity seem to be in sight. Yet during the past few months industrial activities have greatly narrowed; and for a year or so, as in the case of the business concern to which I have referred, are bound to continue narrower than through the years just past—bringing along with this condition of things, as one of its direct results, greatly narrowed profits and a narrower labor field.

In looking for the cause of all this, there are many who blame it upon our currency system—upon what they call the inexpansibility of the currency; others blame it on the rich men of the country—an artifice of Wall Street, they say, to counterfoil the policies of the President; and still others blame it on the President—the legitimate outcome, they insist, of the policies for which he has been standing. In my judgment, none of these are the real originating causes. A currency as expansible as any sane statesman or banker ever advocated, would not have prevented the disturbance that has taken place. The rich men of the country have never been foolish enough to deeply imperil their own interests that they might counterfoil the political plans of another. And the disturbance would have been just what it is, other conditions remaining what they are, had Cleveland, Harrison or McKinley been President instead of Roosevelt. To reach the originating causes, the search must go deeper.

The real cause that lies at the bottom of this industrial disturbance, is the same cause that has lain throughout all our years of prosperity, at the bottom of the people's unrest in the midst of prosperity—the *tremendous shift that has taken place in this country, away from individual participation by the people of the country in direct ownership of the industries of the country*. The fact that though our great industrial structures, railroads, manufacturing con-

cerns, commercial enterprises, are built in large part upon the wealth of the *ninety and nine* deposited in the banks, their immediate financial foundations are the capacity to borrow of the *one*, who borrows these deposits from the banks. The real cause of this shift away from direct individual investment—this shift of our industrial structure from the solid basis of a stable, paid-in invested capital, to the sands of a capital fluctuating with the money market, is the *inherent ineffectiveness of the present-day corporation as a medium of ownership*—the corporate untrustworthiness that prevents the people in the ordinary walk of life from making any direct individual investment in corporate enterprise. But for this, much of the thirteen billions now on deposit, would be in the direct ownership, by the people at large, of our great corporate properties. But for this, the capital that carries our great corporations, would be a stable capital, unexposed to these waves of uncertainty that periodically sweep over a people whose possessions are largely in the keeping of others. But for this, the banker himself would be saved the temptations under which some of them have fallen. But for this, the money centers of the country—the places where individual accumulations are transmuted into property investments—would be, not in Wall Street wholly, but largely in the neighborhoods in which the accumulations arise. But for this, the disturbance that now encompasses us would not have been.

Then, again, out of these new industrial conditions have come this other phenomenon, not economic merely, but social and political—something that goes to the foundations of our future as a republican people—the *distinctly unfriendly attitude of the American mind toward everything that is incorporated*. For failing to distinguish between the corporation abstractly, as a medium through which to wield our national energies, and the particular corporations that have abused that function, we look upon incorporated property, merely because it is incorporated, as the foe and oppressor of the individual man. Realizing that as things are now, few of our farmers, and few of our working men, and few of our small business men, and few of our clerks, have any direct part in corporate proprietorship, we regard corporate proprietorship as inherently an alien proprietorship—something apart from the people at large. Were you to ask if there were not a domain of proprietorship still open to the farmer who wishes to transmute the prosperity of the

year, into a property that is permanent, I must answer, yes, the farm lands of the country; but the farm lands only. Is there not a domain of proprietorship still open to the working man and the clerk? Yes, the savings banks and the little homes; but these only. Is there not a domain of proprietorship open to the ordinary business man? Yes, the little individual business ventures; but these only. In the great incorporated domain—that growth of our country which more than all others combined represents the country's growth—neither the farmer, nor the working man, nor the small business man, has either practical opportunity or interest, other than as incorporated enterprise may affect prices and wages. And it is upon these unrepUBLICAN foundations—these unstable sands—that the American corporation, as an American institution, now rests.

And what is the result? An open field to every species of enthusiast or demagogue to successfully appeal to a people's natural jealousy of anything that is alien, any institution that is not a part of their own life and aspirations, any development of either power or property that does not include and represent the people themselves. Under the people's demand that the so-called trusts be curbed—a demand that has some reasonable foundations—there runs a feeling much deeper than any mere fear of what, in an economic way, the trusts may do. Under the demand that the trusts be punished, there runs an instinct much deeper than a mere determination that the law be enforced. These demands are sincere and natural, but they do not account for the widespread feeling against the corporation that now prevails. That deep and widespread feeling is the offspring of the national consciousness that *somewhere*, in the fundamental relations of the people at large to the great new industrial domain, there is *something* that is not in accordance with our republican institutions—that in some way, in this new great domain, one of the deepest of human instincts is suffering denial.

A few weeks ago, at Boston, the ex-governor of one of the great states, in a brilliant speech, took the President to task for what he considers the President's mistaken policies. But like the waters of the artificial fountain, played upon by electric colors, the speech ceased to be impressive the moment it was uttered—brilliant though it was, it failed to reach solid ground. The President, on the other hand, overheated as he becomes in some of his

antagonisms, undiscriminating in some of his denunciations, subtle and purposeful as his appeals are, nearly always reaches solid ground. Whether he knows it or not, he always starts from, and comes back to, the abiding national consciousness, that somewhere in the great new industrial domain in which we live and move, there is something that is wrong—that somewhere some human instinct is being pinched.

Somewhere, something is wrong. The President says that fundamentally the country is sound. Governor Hughes says that, morally, the country is sound. So it is, if by that we mean that fundamentally and morally the *purpose* of the country is sound. But what government is to political power organized, the corporation has become to modern industry organized. The corporation is the organized form through which modern industrial energies exert themselves. Would that republican form of government be sound that denied to the people, fit to exert political power, and instinct with a desire to take part in it, all practical opportunity to take their individual part in it? Would a government, republican in form, but oligarchic in actual outcome, be a sound form of republican government?

The corporation, as the organized form of modern industry, taps the country's individual resources, from end to end, for the financial foundation on which to rest the fulfillment of its energies. Is a corporate form of organization sound, that, dependent on the people for the resources that give it life, denies to the individual creators and owners of these resources, instinct as each individual is with ambition to have a direct individual part in his country's industries, all practical opportunity to thus take part? Incorporated property utilizes nearly one-half of our wealth, and determines the place in our civilization of nearly one-half of our people. The promise of the law to the ear is that it is open to all on equal terms. But every man who knows anything about corporations knows, that in actual practice, this promise is broken. Can any corporate form of industrial organization, not actually open to all on equal terms, endure in a land where all the other institutions of government are open to all on equal terms? Can any corporate form of industrial organization, oligarchic in practical outcome, stand side by side with a political power wielded by the people at large?

Do not misunderstand me—there is no way known before men or under heaven to legislate men into the possession either of *power* effectually exercised or of *property* securely possessed. All we can do, by legislation, is to open the door—to hold out the opportunity. But that done—honestly, effectively done—as it has been done in opening the door to political power—I rely on the instincts of the American to do the rest.

I once stood on a battleship, marvelling at what the lightnings did. They lifted and lowered the anchor; they ran messages from the pilot house to the engine room; they lifted the ammunition from the magazine to the guns; they loaded the guns; leveled them to the mark aimed at; fired them; they lighted the ship when in friendly waters, and darkened her when in the waters of the enemy. They swept the seas with their Marconi equipment for a thousand miles around in search of whatever tidings the search of a thousand miles would bring; and through it all, the lightnings remained as free as the lightnings that play in the summer clouds. The genius of man has not harnessed the lightnings—they work out his task only because the genius of man has given them the material agency, the open door, through which to work out their own inherent instincts.

What government is to mankind politically organized, I have already said, the corporation, as an intermediary, is to modern industry organized. It is the pride of free institutions that they have diffused among the people the political power of the mass. But that is not the *secret* of successful free government. The secret of the success of free government is, that by opening to the people the door to power, there has been awakened a universal instinct among men that, in turn, created the capacity to successfully exercise that instinct; so much so that it can be safely said that successful government of the people, by the people, for the people, is not the product so much of the institution itself, as of the opportunity that the institution opens up. What can be done with the political instincts of mankind, can be done with this other instinct so deeply imbedded in human nature. In Europe, the work of getting the people at large into direct participation in the proprietorship of industrial properties has already begun—the pressing problem with their most enlightened statesmen being now, how to get back the people into the proprietorship of the soil.

In America, the people at large have always been the direct proprietors of the soil—the pressing problem here being how to get back the people into direct proprietorship of the industries.

It is for the reconstructed corporation then, as *an effective trustworthy medium through which to work out one of the deepest and most insistent of human instincts*, that I speak. I hold it up as the ultimate fundamental solution of the merely economic problem of competition. I hold it up as the final antidote of the kind of industrial disturbance in which we now are. I hold it up, above all other considerations, as the only fundamental and lasting cure of the social and political problems that are pressing upon this generation of men to solve.

This brings me then to the third topic of this address, the "Scope and Limits of Governmental Interference in Corporate Construction and Management." The first inquiry is the scope and limits of government, independently of whether the government be that of the state or nation. To flesh and blood, born out of the loins of nature, and entitled, independently of the state, to life, liberty and the pursuit of happiness, the chief function of the state is that of the organizer and preserver of justice and order. Of flesh and blood the state is not the creator. The corporation, on the other hand, born out of the loins of the state itself, is an artificial person, created by the state. It has no natural rights. Between the corporation and the state, the relation is that of creature and creator; and because of this, apart from the obligations of the state to carry out its engagement to its corporate creatures now in existence, the state is under no obligation of any kind, constitutional or legal, to the corporations of the future—may make them, may mold them, may withhold them altogether, according to its will. To corporations now existing, the state is bound by the doctrines of vested right—to the corporation of the future, the state is not bound at all.

This, however, is purely a juridical view. From a practical standpoint it is not the one in which we are interested; for as an agency of industry, and a form of proprietorship, the corporation is here to stay, and the corporation of the future is as certain to follow the corporations of the present as the men and women of flesh and blood of the future will succeed to those who are here now. So the inquiry is not so much to what limit the government

may lawfully go in interference with the management of existing corporations, or what government may lawfully do in the construction of the corporation of the future, as, bearing in mind the kind of civilization of which we are a part and product, what *ought* the government do, in the way of corporate construction and management. What *power* should be given to government, what *restraint* should be laid upon it.

The theory of our government, as I have already shown in my quotation from John Fiske, is that the greatest attainable industrial development is only to be had under the greatest attainable liberty to the individual man—that it is in the atmosphere of freedom that men do their best thinking; organize what is at hand with the best results; do the best work. And that conception of government in relation to industry is nature's law also; for, when, at the beginning the earth, the sea, and the sky were created, there was put into each capabilities only—into the earth the waiting fuel, and the waiting ore, the primitive fruits and grains and the chemical properties that have developed them; into the sea the potentialities that steam has accomplished; into the sky the waiting lightnings—capabilities that became the commercial and industrial actualities of our age only because, at the same time, there was put into the brains and hearts of men capability to find out and utilize the capabilities of earth and sea and sky.

Thus applying the capability of brain and heart to the uncovered capabilities of nature, the world of human industry began; and thus it has gone forward. In the infinite possibilities of nature the forces that have been utilized in building up our industrial civilization might have been revealed to men without the labor and the delay of individual initiative and research. But they were not. Without free and spontaneous individual initiative and research, these forces would never have been uncovered. But for the inexorable necessity of uncovering them, by his own efforts—as children are left by wise teachers to work out their own problems—the individual himself would never have become the thinking, aspiring, developed being that he is. Indeed, the free man, and the industrial world that surrounds him, are each outgrowths of the same great plan of the universe—each, in a great measure, the product of each other. *In that fact alone*, is the sufficient proof that industrially, as well as morally and politically, men were *intended* to be free.

The corporation, to the extent that it is a thinking, organizing, working entity, has the same title to, and the same underlying need of, freedom from external interference; for within the limits I have named, the only difference between the corporation and the individual is, that instead of one brain thinking, one brain organizing, one set of hands at work, as in the individual, there are, in the corporation, one, ten, or a thousand brains at thought; one, ten, or a thousand brains organizing; ten thousand sets of hands at work—all converging to one common end. Certain it is that the character of interference, from the exterior, that would harass the individual, hobble him, deaden him, would just as surely harass the associated individuals that the corporation represents, each doing its appointed part in the common undertaking; so that the governmental interference, which if applied to the activity of the individual, would tend to destroy his productivity and usefulness, would, in my judgment, be a kind of interference, which applied to corporate management, would be a step backward, instead of forward, in the field of industrial development.

I could easily, had I the time, illustrate this kind of interference from current legislative and administrative proposals—proposals which if put into execution, would put upon the mental activity and ambitions of the country governmental fetters that would reduce commerce and industry to the conditions of slavery that Louis the XIV so disastrously imposed upon his subjects. But without stopping now, for that purpose, I pass from these, the *limits* of governmental interference, to the *scope* of governmental control that can be exercised *without* hampering industrial freedom—the kind of control that will *promote* industrial freedom by opening to the people of the country a proprietary stake in the industrial activity of which they are the chief sustaining resources.

Three considerations present themselves at this point, differentiating the corporation from the individual, and in consequence, corporate industrial freedom from individual industrial freedom. The first and greatest of these considerations is the function of the corporation, as the organized form of holding industrial proprietorship, and the necessity that it become a trustworthy medium to that end. This I have already treated at length. It constitutes the burden of this address. From the standpoint of economics, from the standpoint of business stability balanced, from the moral, the social,

and the political standpoint, this is the paramount consideration. And in the structural principles for corporation reconstruction that I have laid down, there is no more governmental interference with individual industrial productivity, than sound systems of government, or sound elections, or sound primaries, can be said to be governmental interference with the political liberty of the individual and his political productivity. In neither case is liberty or productivity repressed. In both it is simply giving to individual liberty and productivity a sound organism through which to express itself—the dynamo and the wires that gather up and convey the individual potentialities, from conditions where they are comparatively inactive and useless, to conditions where they effectively accomplish results.

The second respect in which corporate freedom is differentiated from individual freedom, is in the case of those corporations, such as railroad and other public service corporations, that bear to the public, on their external or business side, a relationship that is not wholly an arm's length relationship—the relationship of mutual obligations growing out of the nature of the grants under which the business originates and is carried on. Here, in addition to seeing to it that the corporation is a trustworthy medium for the diffusion and protection of proprietorship, it is within the scope of government to see to it also that the mutual obligations, under which both the public and the corporation rest, shall be faithfully performed. The method adopted, thus far, has been such administrative commissions as the interstate commerce commission at Washington, and the public utilities commission in New York. Without stopping to elaborate on this form of government interference—for I do not wish, by diffusiveness, to lose the emphasis I am trying to lay upon the corporation as a trustworthy medium of *proprietorship*—I shall only say that government interference, on this external or business side of public corporations, should be limited to those points at which the public and the corporation touch each other as actual parties to the grant, such as equality of treatment, adequacy of service, reasonableness of compensation. Government should in no degree—the corporation being organized and conducted as a trustworthy medium of proprietorship—attempt to dictate or control the business judgment of its managers. To insure that both the corporation and the public are held to this reciprocal obligation,

as well as to secure despatch in the settlement of differences between them, my judgment is that the deciding body ought to be a judicial tribunal, or at least a quasi-judicial tribunal such as the commissions in Canada and England, having nothing to do with, and no responsibility for, the initiation of complaints. In that way alone, it seems to me, can we preserve in this branch of our state polity the axiom of justice underlying every just system of government, that no man can, at one and the same time, be prosecutor and judge.

The third respect in which corporate freedom is differentiated from individual freedom is in those cases in which corporate organization, though not of the public character last named, rises to the point of private monopoly. So many foolish things have been said about monopoly—so many demagogues have ridden the word out of breath—that its real significance in English and American polity is sometimes overlooked. Constant as has been the attachment of our governmental system to individual industrial freedom, there never was a time when the freedom of one individual, by combination with the freedom of others, was allowed to go to the point of monopoly. Against individual freedom, culminating by combination in monopoly, the common law was just as vigilant as our anti-trust laws. Indeed were the Sherman act to be amended so as to penalize only unreasonable combinations, it would be but a re-enactment into national law of what the common law upon that subject has always been; from which it follows that it is within the scope of government to prevent or control, through corporate organization, what government has always undertaken to prevent or control, through combinations effected under other forms, between individuals. And my own judgment is that this function of government would be best administered by giving to government, in addition to its power to curb monopoly, after monopoly has been accomplished, the far more effective power of prevention before the charter is granted—a preventive method that falls in with the structural principles laid down in the opening of this address.

Thus far I have spoken of government interference independently of whether it be the interference of state or nation. That under our system of dual government the states may do the things I have suggested, if government may do them at all, goes without saying. Can this power be put also into the possession of the

nation, in respect of corporations whose business substantially is not within a state, but overrunning all the states? And can this be done *without a constitutional amendment*?

That the nation can, as the constitution now stands, enter upon a national policy for corporations engaged chiefly in commerce between the states, I have no doubt. There is no doubt, to begin with, that power to *incorporate* is in the federal government. The national charters to national banks, and the national charters to trans-continental railways, are examples of that power. Indeed the question is not as to the power of the federal government to incorporate, but the power of the federal government over the *subject matter* with which the proposed federal corporations would have to deal.

There is no occasion, it seems to me, to look for federal power over the subject matter in any out-of-the-way corners of the constitution, such as the clause to establish and regulate post roads. All the power that is needed stands plainly forth in the commerce clause of the constitution. True it is, that until the last few years, the commerce clause has not been invoked in support of such power. But that is not because the grant was not originally there; it was because commerce did not yet need the grant. It is not the commerce *clause* of the constitution that has been growing; it is commerce *itself* that has been growing. As soon as nationally incorporated railroads as instruments of interstate transportation, became a commercial necessity, the Supreme Court recognized them as instruments of interstate commerce, and, therefore, rightly incorporated under federal law. A careful reading of the beef trust injunction cases, both in the Circuit Court, and in the Supreme Court, will disclose that where in any manufacturing or commercial industry, the raw material chiefly originates in one set of states, to be manufactured in another, to be transported and sold in still others, the commerce thus resulting is commerce under the commerce clause of the federal constitution. This is all that I shall say at this time at least, upon the constitutional side of this subject, for I have already taken too much of your time, and must press on to an immediate conclusion.

Let me, in this conclusion, compress if I can into a few sentences the thought that I wish this address to stand for. This America of ours, in the embodiment of its political power, is a government of the people, by the people, for the people. Because it is such a

government, individual freedom has, without impairment, been united with centralized strength. This America of ours, as represented by its property, until the corporate form of organized property and industry came, was an America also of the people, for the people, and by the people. Because of this, more than from all other causes, the proprietary interests of America became a matter, not of class concern, as in the old world, but of genuine, sincere, individual and national concern and guardianship.

But with the discovery almost within our own time, that within this old external world, upon which mankind had lived from hand to mouth, there was an interior world of natural forces waiting to be summoned to make life tenfold easier, and more abundant for all, the corporation as *a form of organizing energy* sprang up among us. The new great incorporated domain thus raised up is already occupied, as the field of livelihood, by nearly one-half of our people, and already represents well toward one-half of the nation's wealth. Compared with other kinds of property, it is pre-eminent in the public eye. Had there come to pass *here* what came to pass in America's distribution of participation in the *powers of government* among her people; had there come to pass here what came to pass in America's distribution of her *great landed domain* among her people; had the corporate form of organizing and holding property *invited the trust and the interest* of the American people as a whole; had the corporate form of organizing and holding property held out inducements to participate as proprietors in the incorporated domain to those whose lives are bound up in that domain for a livelihood—to become proprietors as well as wage-earners—there would, of course, have been corporate questions, of one kind and another from time to time to determine; *but there would be no deep-seated corporate problem, going to the foundations of society, such as now confronts the American people.* And it is on this account that the problem, raised up by this new great incorporated domain, is preeminently the people's problem.

Thus far, in the discussion of that problem, the public mind has been divided into two camps, the avowed purpose of the one being to "exterminate" all the big corporations or so-called trusts, and the avowed purpose of the other to "regulate" them. It looks now as if, along some such line, the pending presidential election is to be fought out. Exactly what is meant by those who propose to

exterminate, I do not know, unless it be that the people of the country are to be put into a political attitude persistently hostile to incorporated industry and commerce—a political attitude that will strike the corporation a blow every time, and at every point, that opportunity offers.

Exactly what is meant by those who propose to "regulate" the big corporations and so-called trusts is a matter that but for the pending amendment to the Sherman act, said to have been formulated at conferences at the White House, would have remained indefinite and uncertain—something calculated to impress one set of minds as a big stick with which to practically put out of business the big corporations, at the same time that it was impressing another set of minds as a poultice merely, calculated to allay the people's feeling, but resulting, in practice, in no substantial interference with the corporations as they exist to-day. If the pending amendment to the Sherman act sums up what the policy of regulation is intended to do, much of this uncertainty and indefiniteness is done away with. We know, in that case, what is meant by "regulation." And let us see how far it goes towards solving the real problem that confronts the country.

The Sherman anti-trust act, as it stands unamended, makes all combinations and associations in restraint of trade unlawful; and this irrespective of whether the actual result of the combination be hurtful or helpful, reasonable or unreasonable—the public purpose embodied in the Sherman act, as it now stands, being that there shall be no combination or association in restraint of trade, even though it be plainly manifest that the combination or association be helpful, rather than hurtful, to the public welfare.

The pending amendment lets this Sherman law stand just as it is, against all combinations and associations that do not submit to the executive branch of the government, for its O.K., such full information respecting financial conditions, contracts, and corporate proceedings as may be prescribed from time to time by the man who happens to occupy the office of President of the United States. Failing to submit such full information, the combination or association remains unlawful, even though the result be not hurtful or unreasonable; but submitting, the combination or association immediately becomes lawful, except only to the extent that it may be unreasonable or hurtful; and, a year elapsing without complaint, becomes lawful

absolutely, without exception—the whole object of the pending amendment apparently being that upon making peace with the man who happens to occupy the office of President of the United States, the corporations, just as they now exist, may pursue without further hindrance their accustomed way.

But one looks in vain, from end to end of this scheme of so-called regulation, for any recognition that the *diffusion of corporate proprietorship among the people* would tend to solve the problems of competition, and the stability of enterprise; for any thought indeed, of corporate proprietorship diffused among the people; for any thought toward making the corporate form of holding property a trustworthy medium through which the people of the country might come back into the ownership of this growing domain of the property of the country; for any thought of the release, immediate or ultimate, of the great new incorporated domain from the exclusive grasp of that small class who, under existing corporate policies, have successfully pre-empted it, and who, under existing corporate policies, will continue to control it.

For one, a participant in the conference last October that appointed the committee to propose some plan of corporate reform in connection with amendments to the Sherman act, I reject this plan as a deceit—a promise made to the ear but broken to the hope. The reason why demagogism so often prevails over real constructive conservatism in the treatment of matters relating to the corporation, is that demagogism usually has on its side a certain human note—an indefinable sympathy with men and things—that that which passes for constructive conservatism often lacks. This pending amendment, as a solution by regulation of the corporation problem, lacks every essential human note—discloses no interest in men except as they are earners of bread and customers of the corporation—no sympathy with men as independent, aspiring human beings: It aggrandizes, beyond measure, the office of President of the United States, putting it within the power of that single officer of government to say what corporations shall live, and what corporations shall be outlawed, but it opens no door that will give an interest or stake, in the mighty incorporated domain, to the eighty millions of people upon whose energy that domain was built up, and upon whose wealth, in the last analysis, it continually rests. The paramount consideration of the hour, looked at from every

point of view, economic, human, and political, is to put the great new incorporated domain on republican foundations, *by making the corporate form of holding property a trustworthy medium of proprietorship*. But if this proposed amendment is to be the beginning and the end of the policy of "regulation," to which there is no alternative except the policy of "extermination," there are some of us who have no place with either policy.

But we need not despair. It was Disraeli who remodeled the politics of his country upon the demand, that between British India and the rest of Asia there should be a scientific frontier. In the wide stretches of corporate discussion now going on, there is as yet no scientific frontier. But the frontier will eventually be run; and when it is, on one and the same side, where they rightly belong, will be found those who are so little in earnest, on the human side of corporate reform, that they will accept nothing that is effective, and those who are so blinded by their earnestness that they will accept nothing that is practical; and on the other side will be found the triumphant common sense of the American people, awakened anew to the human note that men do not live by bread alone, and taking up anew the ideal of government of the people, by the people, for the people, but so broadened, that along with the government and the farms of the nation, the new great industrial domain will ultimately become, also, a possession of the people, by the people, for the people; for in that direction, and in that direction only, lies the road to a settlement that will be lasting.